IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.874 OF 1990

State of Maharashtra) ..Appellant.

Vs.

Ahmed Ladle Patil)
Age about 21 yrs.)
Residing at Barkya)
Compound, Bhiwandi,)
Dist.Thane) ..Respondent.
(Orig.Accused)

Mr.B.H.Mehta, A.P.P. for the State.

None for the Respondent.

CORAM: V.M.KANADE, J.
DATED: 27TH OCTOBER, 2004

ORAL JUDGMENT :

The State has filed this Appeal challenging the judgment and order passed by the Sessions Judge, Thane in Sessions Case No.142 of 1990. By the said judgment and order dated 15th September, 1990 the trial Court acquitted the accused of the offence punishable under section 20(b)(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The prosecution case is that on 24.1.1990 some police officers were proceeding in a jeep in

connection with an enquiry regarding a criminal case which was registered at Nizampura Police Station. At that time, they noticed that one person is running away from the entrance of U.P.Hotel, carrying a bag in his hand. They, therefore, chased that person and A.C.P. More asked him why he was running away. At that time Shri More asked him what was in the bag which he was carrying and that person stated that there was charas in the bag. Thereafter, Shri More asked Constable H.C.Gaikwad to call two panch witnesses. Accordingly, a panchnama was made and charas was found in the bag. Total quantity of 875 gms. was found in the green plastic bag which was kept in the bag which was being carried by the accused. The contraband was seized and a seal was put on the said packets. The signature of the panchas was taken. The investigation was handed over to P.S.I. Chaudhari. Sample packets were sent to the chemical analyser's office. After receipt of the report, charge-sheet was filed. The prosectuion examined seven witnesses. The trial Court acquitted the accused.

3. I have perused the evidence of the witnesses examined by the prosecution. P.W.1 H.C.Pathan and P.W.2 panch witness Bardi have deposed about the

prosectuion case. From the perusal of the prosecution evidence, it can be seen that the statement given by these witnesses is in respect of the place and manner in which the things have taken place as also the spot where the accused was apprehended. The prosectuion has not examined A.C.P. More, who was the main witness. There is a serious lacuna in the prosecution case in respect of the sealing of the contraband and there is a clear violation of the provisions of section 53 and 55 of the Narcotic Drugs and Psychotropic Substances Act. Further, the person who sealed the bag has not been examined. Apart from this, there is a serious contradiction in respect of the timing of the panchnama and the handling of the contraband. The contraband, though it was received by the A.S.I. Kamble, no entry to that was given in Exhibit 12. However, no entry has been made by A.S.I. Kamble in the mudemal register. Similarly, no steps have been taken by the P.S.I. to get the registration done with the mudemal clerk. On the contrary, the property has been handed over to P.S.I. Chaudhari, who was the Investigating Officer. No acknowledgment has been taken from P.S.I. Chaudhari. There is no evidence to that effect as to when the property in question and the samples

which were taken, were sent to the chemical analyser.

4. Thus, in my view, there is a clear non-compliance of the provisions of section 55 of the N.D.P.S. Act. The trial Court, in my view, has rightly come to the conclusion that the prosecution has not proved its case beyond reasonable doubt. I do not see any reason to interfere with the said order. The Appeal is therefore dismissed.